

Two CASES. Submitted to CONSIDERATION.

1. Of the Necessity and Exercise of a Dispensing Power.
2. The Nullity of any Act of State that Clashes with the Law of God.

I Publish This Paper, out of a Sense (or Things stand at Present) of what I Owe to the King; To my Religion; To my Country; and to my Self; and would neither Mislead, nor be Misled. If I have Reason on my Side, No Good Man will Blame me for what I have done: If I am in an Error, I shall so Gladly Submit to be Better Enformed, that No Charitable Man will refuse Lending me his Hand to put me into the Way. Beside, that it will be a Matter of Importance, for those that are of Another Opinion, to satisfy the World whether I am in the Right, or Not. I speak to the Case of All Governments; i.e. of Government according to the Divine Appointment, and Institution of it, without Any Restriction, that is either Partial, or Local. I have had an Unlucky Hand, and must Every man Expect to have, that makes so many men his Enemies, as Value a Trimming Interest before an Inflexible Honesty. For want of Better Matter, I am Charged of late with Contradicting my self, which I am not yet Conscious of, in Any Act, or Syllable; either in my Allegiance, or in my Religion, from Fifty years Last past, to this very Day.

R. L. S.

CASE I. Of a Dispensing Power.

IF it be True, that Humane Laws can never come up to All the Ends and Cases of Government.

If it be True again, that where They fall short, there are Certain Fiduciary Powers still ready at hand, in the Foundations of All Governments to Supply the Defect.

And if it be True in the Third Place, that without such an Auxiliary Reserve, Government falls to the Ground, for want of means to Support it: The Inference is Plain and Natural, from the Admittance of These Three Propositions, to the Doctrine of a Dispensing Power.

The Laws of Man are the Work of Frail, and Fallible Law-Makers: Or supposing them to be Men of the most Consummated Wisdom, and Integrity; and their Statutes as Extensive, as Civil Prudence, and Precaution can make them: there will be Omissions yet; Change of Interests; Crosses and Surprising Accidents; Necessities Innumerable, and Fresh Matter Every Day Started, to make Work for New Methods, and Expedients. What would become of Government now, under This Incompetency of Humane Constitutions, without taking in Those Fiduciary Powers (which are Wrapt up in the Laws of Nature, Equity, and Right Reason) to their Aid?

Those Subsidiary Laws, or Powers, are Everlasting, Universal, Uniform, Steady, Just, Infallible, and All-sufficient: The Authority of them is Unquestionable; the Equity Undeniable; and the Power Irresistible; They are No Other in Effect, than the Instincts, and Impulses of Providence it self, Given in the Hearts of All Reasonable Beings. But in short; If it be by God, that Kings Reign, and Administer Judgment; it will then follow; that All the Prerogatives of Power are as Sacred as the Ordinance it self. They are Sovereign, Inalienable, Ever, and in All Places, the same.

Now taking for Granted, the Imperfections of the One, and the Ample Sufficiency of the Other, to All Intents and Purposes; That Government is of God; and Humane Society the Work of Providence; That God's Vicegerents are Answerable to their Principal for the Care and Protection of the People Committed to their Charge; That it is Impossible for them to Acquit Themselves of their Trust, Duty, and Commission, purely by the Force of Laws of Man's Making, without some Higher Power to Resort to for Relief; And that it is the Office, as well as the Prerogative of the Sovereign to Interpose with his Authority, for the Well-Being, and Safety of the Publick: Taking all This for Granted, I say, the Bare Supposal of so Mortal a Failure, for want of a Dispensing Power, would imply, either an Oversight, or an Injustice, in the Original Grant, and Command: An Oversight, in the Disproportion of the Means to the End; or an Injustice in Exacting Impossibilities, and requiring from Governours, More than they are able to do. To keep Clear now of so Lewd an Imagination, it must be Honestly Presum'd, that God has not left us without some Appeal from the Infirmities of Mankind: So that I shall now speak a General Word or Two, concerning the Rise, Make, and Obligation of Humane Laws; and what Affinity they Have, or Ought to have, with Laws Divine.

The Great Dictator of Rules and Measures for the Governing of Men in Society, was GOD HIMSELF; and Those First Principles have been Handed down to us, in an Uninterrupted Course of Practice, and Tradition, from their very Institution to This Day, by the Voice of Nature, and by the Universal Assent of All Ages, to the Eternal Equity, and Reason of them. They are of the same Force at This Instant, that ever they were; and so much the Standard of All Political Acts, that they are No further Binding, than as they Conform to this Test. Government, in short, is no more than Right Nature put in Exercise; General Precepts Distributed into Particular Provisions; the Secret Influences of Rectified Reason made Publick, and Digested into Laws. It is the Law of God, in fine, that speaks in the Law of Man; And This Law Paramount, is the Sovereign Guide that Law-makers Ought to Follow. Not but that Governours, and Legislators have a Liberty of Discretion, in Things Indifferent; but they are Nevertheless Bound up not to Depart from the Equity of the Primary Fundamentals; for No Provision of State must be Admitted in Barr of those Prerogatives.

There will not be much Difficulty, I presume, to Yield the Imperfection of Humane Laws; the Sufficiency of the Laws of Go-

vernment; the Necessity of Government it self, and of a Dispensing Power to Uphold it; Nor, finally, to Grant that All Laws of State are to be Tried by God's Laws, and that the Use, and Intent of Those Laws of Prerogative is to Supply, or to Correct, what is Wanting, or Amiss, in the Law of the Constitution. All This must be Acknowledged; for, otherwise, we shall have the Law of This, or That Community set up against the Law of the Universe. Man's Contrivance against God's: Laws that leave us at a Loss, a Thousand Ways, for want of Power, Direction, Due Application, and the like, against Laws that Provide for us in All Instances whatsoever. We have spoken of the Need, and Use of a Dispensing Power; The Next Point in Order will be the Proper Receptacle of it.

If the Dispensing Power be an Essential of Government; where should it be Lodg'd, but in the Common Repository of All the Ensigns of Majesty; for it is Incorporated with the First Principles of Government; and so to be Exerted, from time to time, at the Will and Pleasure of the Supreme Magistrate; with a Saving only, to the Sacred Obligations of Right Reason, and the Indispensable Privileges, and Duties of the Ruling Office. Humane Laws, are, at Best, but the Specification of Particular Duties, drawn from the General Lights, and Precepts of Nature; and recourse must be had in All Cases, to Those Authentick Originals, for the Correcting of False, or Imperfect Copies. What's to be done, where the Letter of the Law draws One way, and the Conscience of the Prince, Another? He must, at Necessity, Dispense with One of the Two Laws. He is Accountable to God, for the Breach of Trust, if he does not Act, according to his Judgment, for the Good of his Subjects; And the Law of the Land can never Oblige the Sovereign to do any thing contrary to the Law of his Authority, and Commission; which is no more, than Employing the Law of his Prerogative for the saving of a State, from the Law of the Land, which, (as it may happen) would Hazard the Ruine of it. But where's the Danger at last, of This same Bug-bear-Prerogative of a Dispensing Power?

The Right, and Practice, (they say) of Dispensing with One Law, layes All the Rest at Mercy. But I am of Opinion rather, That the Want of such a Power layes Government it self at Mercy. And whereas it is Objected, that it sets up Absolute Power under the Cloak of a Dispensation; it does, in Truth, prevent the Introducing of an Anarchy, for fear of Tyranny: Neither is it the Business of a Dispensation, to Invalidate Humane Laws, but to Uphold the Authority of Laws Divine. Reason of State, and Equity, make All Governments to be Absolute, in Some Cases, and Occasions; and what matters it to Us, Whether This comes by Creation, or by Accident? Briefly, He that Quarrels Government for being in some Respects Arbitrary, Quarrels God's Providence, for Making it so; and for finding it Necessary for to be: And This Exception strikes at the very Foundations of Power it self. If a Prince cannot Dispense, he cannot Govern, where Necessity is too strong for the Law. His Commission is Positive, and he Acts under a Command, as well as under a Duty. He is, upon his Peril, to Execute the Powers that are Given him, and as much Obligated to Assert his Prerogative against all Usurpations, as not to abuse his Power, to Violence, and Oppression: Or even in case of such an Abuse, a Prince has a Power to do many things that he has not a Right to do; and therefore the Morality of Acting must be Distinguished from the Authority of Governing; for the Character stands Firm, in Despite of the Male Administration.

There is Another Unlucky Mistake too, that's very Rife. [Stay for a Parliament, they Cry, and let those Laws be Repealed, that are not fit to be Continued.] This is the Best way certainly, where the Time, the Quality of the Case, and the Temper of the People will Bear it. But what if the Danger Presses? What if the Delay be Certain Death? and the Disease cannot Wait for a Remedy? The King's Duty never Sleeps; his Authority never Intermits; and he is as much Accountable to Almighty God, for the Exercise of his Function, Out of Parliament, as in Parliament. If YOUR OWN Laws will not do it (says God) make Use of MINE, as you will Answer the Contrary. Shall a Prince say, Lord, I must not Dispense? as if he might Dispense with God's Law, though not with his Own.

And

And then for the Quality of the Case; the Privacies of State-matters, as the Manage of Secret Commissions, Negotiations, Intelligences, Counsels, and Intrigues; These are Affairs, so peculiar to the Cabinet, that they are Wholly Foreign to the Cognizance of a Parliament; and yet these Invisible Wheels are a Kind of Political, Perpetual Motion; and of Absolute Necessity to the Great Design of Government it self. There are Other Cases, where the Ground of the Suspension is only This or That Particular Emergency. And in These Cases, it often falls out that it may be Death almost, Nor to Suspend, and yet as Mortal to Repeal the same Law.

And so the Temper of the People must be Allow'd to go a great way too; when the Mob are Possess'd with Ill Opinions, and Jealousies of their Superiors; as in the Instance of That Fatal Parliament of Forty One: And the Danger of Two Parliaments since, at Westminster and Oxford, where his Late Majesty escap'd, very narrowly, the Dear Experiment of the same Remedy.

Well! but 'tis a Temptation, they pretend, to the setting up of an Arbitrary Power, to say, that a Prince MAY do't, if he WILL. Now this is to Suppose that Whoever MAY do't, if he WILL, WILL, do't, if he CAN; and if it holds That Way, there's Nothing but Oppression and Tyranny upon the Face of the Earth. For the Prince that has it not in his Power to Oppress, has it not in his Power to Govern; for he is Govern'd, where he is Impotent, and the Controul sets up One Sovereignty against Another.

The Republicans insist mightily upon the Trust, the Receipt, and the Possible Abuse of it: But what now if there be No Avoiding of such a Trust? What if there never was any Government in the World; Or if Humane Society cannot subsist WITHOUT it? What if at the same Time that this Trust is Controvers'd, there are a Hundred other more Dangerous Trusts, Admitted? That is to say, as to the Enabling of a Prince to make Slaves of his People? What if the Trust, and the Power have Always been in the same Hands? And in Conclusion, if it be Utterly Impossible to secure People against a Possible Abuse: how Wild, and how Unreasonable a Thing is it, to raise Scruples against the Eternal Course of Nature and Justice!

To speak to the Matter as it lyes, somewhere or other there must be a Trust, and That Trust may be Abused, whenever it is Placed: So that a Trust is Inevitable. 2ly. If it never Was Otherwise, the Case is Universal. 3ly. There must be a Trust amongst All Sorts, and Degrees of Men, in All manner of Dealings; and in a Million of Common Cases, where Life Limb, Liberty, Fortune, Body, Soul, and Good Name, (perchance) may all be Concern'd. There is No Place, in fine, for the Offices, either Publick, or Private, of Humane Society, without it. What's the Chancery, but a Court of Dispensation for Granting Relief in Equity against the Letter of the Law? Do we not Trust Divines, Surgeons, Physicians, Lawyers, Bankers, Relations, Children, &c. &c. &c. in a Thousand Cases, to do as they think fit, without the Rigour of the Commission? And in a Word, there is a Law of Necessity, that overrules the Obligation of All Our Positive Laws. Upon the same Reason, we cannot Live Men by Men, without Trusting one Another; and Providence has made This Trust to be necessary, that we can have neither Peace, Liberty, Commerce, nor Property, without it; and thus we are oblig'd to Trust to Trust Governours with the Administration of Justice; Nay, and where God has Entrusted them with the Sword, for Justice and Peace, and the Peoples. Will Men have no Governours at all, unless they may have such a Governours, as will never wrong, and which will make it impossible ever to be wrong'd? This would be to make every Man and Town an Empire of the Universe; where Every Body is his Body; and yet This very Mob, must be Tru'd, and have their Vouchers too.

But 4ly. Why is so much more Press'd upon this Single Privilege, than upon the Rest, that may do us more harm, more Mischief? Why are we so much more jealous of this, than of Robberies, and other Military Privileges, from which we have the Power of the Sword, and they have not? Why are we so much more jealous of the Privilege of the Dispensing Power, than of the Power of Life and Death, or of the Power of Pardoning, or of the Power of Creating Criminals, bringing in Foreigners, &c. &c. All these are as great as Last, that a Just, and a Gracious Prince, will not abuse, nor will he dispense Power; and he that would make himself a Law, cannot do his Work, in Defence of Law and Justice.

5ly. The Power, and the Trust are inseparable. But where there's no Publick Power, there's no Publick Trust; and where there's no Publick Trust, there's no Publick Power. What Authority, without the Right to Take at the Time, the Life, the Limb, the Measure, &c. as if the Multitude were a Judge, and to condemn, and the Sovereign only to Execute; or in plain English, to propose himself, in a legislative to the Choice of the People. And then once Prescrib'd to a Prince what it is for him to do, and they shall soon put it to a Vote amongst themselves, whether it is for, or No, for That Person to Govern. But what Prince has ever come they to be Rulers in This Case, but to be Rulers in the Case of the Law? To Close This Point, the 2d of Law is, that the Letter of the Law will not reach That Case, it is to be understood that the Law speaks of Things, and never of Persons: In This Case it belongs to the Sovereign to Explain, and declare That Law relating to the True Intention of it; The Equity of it being the Gift of Government.

6ly. It cannot be Imagin'd, that the Possible Abuse of Power (which is Impossible to be Cleared, or Prevented,) should be Offer'd as a Reasonable Argument against the Divine, as well as the Political, and the Necessary use of it; for it puts a Stand to the Sun in its Course; which is all one with a Stop to the Orderly Motions of Government.

It is Objected once again, What if the Chief Ruler shall say there is a Necessity where there is None; and make That Pretended Necessity, the Ground for his Proceeding as Will and Pleasure? Necessities, they say, are Numerous, and carry Pomp, and Noise along with them: In Sea-storms, or Conflagrations, the Multitude are Wincles to the Streets, To which I Answer, that if a Prince says there is a Necessity where there is None; The People, on the other hand, may say there is NONE, where there is; and no Umpire at last to End the Strife; But, Right or Wrong, the Former is a Sentence of Order and Authority, upon a Foundation of Law, and Conscience; The Other, an Indeterminable License, in Opposition to Practice, and Common Sense; and an Usurpation, over and above. The People Judge by their Eyes, their Ears, and shortly, by what they See, Hear, or Feel; but the Magistrate reads Effects in their Causes; and it is both the Prudence, and Duty of his Function to Prevent Mischief in the very Seeds and Roots; before they come to a Head.

To Sum up the Whole now; If Government; The Rules, Powers, and Measures of Government, be all of God; If Those Foundations be layed in Right Reason, and Justice, and Communicated to All Mankind, in the very Bowels, and Inflexibility of Reasonable Nature; If Humane Laws fall short of the Ends they were Design'd for; and No Means left us to supply That Failing; the Inference is, that either Those Original Lights are given us in Vain; or that Providence has made a False Reck'ning, which are Two Points that cannot be so much as supposed, without the Highest Indignity to God's Power, and Wisdom. As to the Receipt of this Sovereign Privilege, and the Judgment, Where, When, How, and in what Degree, it is to take Place, the Order of Nature, and of Government tells us, that It is impossible to Vest it in the People, without Confounding Sovereignty with Subjection.

CASE II.

The Nullity of any Act of State, that Clashes with the Law of God.

THE Two Cases above, are but, Effectually, the Abstract of Twenty or Thirty Observations upon the same Text. I have done with the Former, and as to the Other now; It is out of Doubt, that all Those Pretended Laws, are Nullities, that take upon them to Forbid, what God and Nature Command, or to Command what God and Nature Forbid. This Single Position might serve for a Full, and a Final Resolution upon This Point: but having Touch'd upon One Particular under this Tongue in several Observations, (in the Case of Charles the First) and particularly in my Late Answer to a Letter to a Dissenter, &c. I would willingly Propagate the Opinion, if it will hold Water; and I am as ready to Relinquish it, if it will not Abide the Test. But however, I shall recommend it to the Publick, Once again, in the very same Words.

In the Case of the Proceedings, under Charles the First against the Papists. That Excellent Prince, according to all Reasonable, and Humane Presumption, lost his Crown, and his Life, in Compliance to a Void Act of his Own, in pretending to Bar himself the Use, and Service of his Subjects: As if an Act of State could Supercede a Fundamental of God and Nature. I have the Authority of a Great Man (Bishop Sanderfon) to Back me in the Casuistical Streets of This Instance: [God (says he) hath given to his Vicegerents here on Earth, a RIGHT IN, and a POWER Over the Persons of ALL their Subjects, within their several Respective Dominions, even to the spending of their Lives in their Countries Service; WHENSOEVER they shall be by Their Authority call'd therto. Five Cases, p. 71.] Now if they have These Privileges of RIGHT, and POWER, from GOD; and Extending to ALL, and WHENSOEVER, without Exception, either to Time, Number, or Distinction of Persons: What Earthly Power shall dare to Controul This Commission? And I have One Word more to Offer now, (that I have formerly spoken to) which comes a little Closer yet to the Point.

The Precept of [Honour thy Father and thy Mother] is undoubtedly of Divine Authority; and a Command, of an Immutable, and Indispensable Obligation: And it has Catholique Assent, that it extends, as well to our Civil, and Political, as to our Natural Parents. By This Law, All Subjects are bound in Conscience to Attend the Call, and the Service of their Prince; for the Precept is Positive; without Any Qualification, Limitation, or Condition whatsoever. The Question will be Shortly This now; Whether Any King, can by any Act of Civil Authority, Divest himself of This Right, over the Persons of his Subjects? I do not say but he may Chase whether he will Command them, or Not; but he Cannot Discharge his People of their Duty of Obedience, in case he Requires their Service; That is to say; In any Case, which is not Contrary to the Will, and Word of God: No Humane Law Can Absolve them from That Office of Allegiance: So that in the Conclusion, either Those Subjects are clear before God, that serve their Prince, when by him thereunto required, notwithstanding any Law of Man to the contrary; Or the Ten Commandments may be turn'd to Waste Paper; If the Law of the Lord shall Forbid upon a Penalty, That which the Law of God, Commands upon a Penalty.